

**EXHIBIT 14**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**CERTIFIED COPY**

ELLIOT MCGUCKEN, an individual, )  
 )  
Plaintiff, )  
 )  
vs. ) No.  
 ) 1:19-cv-09617-KPF  
NEWSWEEK LLC, a New York )  
Limited Liability Company; and )  
DOES 1-10, inclusive, )  
 )  
Defendants. )  
\_\_\_\_\_ )

CONFIDENTIAL

VIDEOCONFERENCING 30(b)(6) DEPOSITION OF  
NEWSWEEK DIGITAL LLC'S PERSON MOST QUALIFIED,  
BY AND THROUGH, JAMES ETHERINGTON-SMITH  
THURSDAY, MARCH 11, 2021

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(800) 288-3376  
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REPORTED BY: MARYLYNNE SANDOVAL-ROBLES,  
CSR NO. 12498

FILE NO.: AF01A27

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Plaintiff,	)	No.
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vs.	)	
	)	
NEWSWEEK LLC, a New York	)	
Limited Liability Company; and	)	
DOES 1-10, inclusive ,	)	
	)	
Defendants.	)	
_____	)	

CONFIDENTIAL VIDEOCONFERENCING 30(b)(6) DEPOSITION  
OF JAMES ETHERINGTON-SMITH, taken on behalf of the  
Plaintiff, commencing at 6:34 A.M., on Thursday,  
March 11, 2021, pursuant to Notice, before MARYLYNNE  
SANDOVAL-ROBLES, CSR No. 12498, a Certified Shorthand  
Reporter, in and for the County of Los Angeles, State  
of California.

\*\*\*

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1 APPEARANCES:

2 For the Plaintiff:

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I N D E X

WITNESS	EXAMINATION	PAGE
James Etherington-Smith	By Mr. Burroughs	6, 168
	By Ms. Gates	166

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PLAINTIFF'S	PAGE
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13 - CMS' internal statistics for subject article, Bates stamped NEWS000013	129
14 - Editing portion for subject article, Bates stamped NEWS000014	130
15 - Editing portion for subject article, Bates stamped NEWS000015	137
16 - Dialogue box when embedding an image, Bates stamped NEWS000016	141
17 - E-mail correspondence, Bates stamped NEWS 000017-000019	149
18 - E-mail correspondence, Bates stamped NEWS000021-000022	150
19 - Google Analytics of subject article, Bates stamped NEWS000020	157

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I N D E X  
(Continued)

PREVIOUSLY MARKED EXHIBITS

PLAINTIFF'S	PAGE
2 - Newsweek Policy, Bates stamped NEWS000001-000002	54
11 - Newsweek Article, Bates stamped NEWS000081-000083	87

QUESTIONS INSTRUCTED NOT TO ANSWER

None.

INFORMATION REQUESTED

None.

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CALIFORNIA, THURSDAY, MARCH 11, 2021

6:34 A.M.

JAMES ETHERINGTON-SMITH,  
called as a witness by and on behalf  
of the Plaintiff, being first duly  
sworn, was examined and testified  
as follows:

EXAMINATION

BY MR. BURROUGHS:

Q. Good morning. Can you state and spell your  
name for the record?

A. Yes. James Etherington-Smith. That's  
J-A-M-E-S, E-T-H-E-R-I-N-G-T-O-N, hyphen, Smith,  
S-M-I-T-H.

Q. Great. Now, where do you currently reside?

A. In London, England.

Q. Okay. And are you currently employed?

A. Yes.

Q. Okay. What is your current occupation?

A. Currently managing editor at Newsweek London  
Bureau.

Q. Okay. How long have you had that position?

A. Since October of 2020.

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1 BY MR. BURROUGHS:

2 Q. Okay. When you use an embed, is the  
3 photograph displayed on Newsweek.com?

4 A. It's -- it is visible on Newsweek.com.

5 Q. Is it visible to readers of Newsweek.com?

6 A. Yes.

7 Q. Okay. So is it compliant with Newsweek  
8 policy to use third-party artists' work without their  
9 consent so long as it's used via the embed process?

10 MS. GATES: Objection as to form.

11 THE WITNESS: Yeah. Please repeat that one  
12 more time.

13 BY MR. BURROUGHS:

14 Q. Sure. Is it compliant with Newsweek policy  
15 to use third-party artwork without the artists'  
16 consent so long as you use it via an embed process on  
17 Newsweek.com?

18 MS. GATES: Objection as to form.

19 THE WITNESS: Yeah. I would say that there  
20 is no sort of policy on that specifically in the  
21 sense that using an embed has never been considered  
22 -- and sorry. What was the last part of your  
23 question? Without consent. Using an image -- an  
24 embed without consent has never been considered a  
25 potential copyright issue.

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1 BY MR. BURROUGHS:

2 Q. So in your mind, as of today, March 11th,  
3 2021, Newsweek doesn't have a policy about using  
4 content via embeds; is that accurate?

5 A. Nothing that sort of specifically addressed  
6 using embeds and saying, do not use embeds without  
7 consent.

8 Q. Are you aware of whether or not Facebook has  
9 taken a position on whether publications like yours  
10 can use photographers' work without their consent via  
11 the embed process?

12 MS. GATES: Objection as to form.

13 THE WITNESS: I'm not aware.

14 BY MR. BURROUGHS:

15 Q. Would it surprise you to learn that Facebook  
16 has publicly stated that publications like yours  
17 cannot use photographers' content without consent  
18 on --

19 MS. GATES: Objection --

20 (Speaking simultaneously.)

21 BY MR. BURROUGHS:

22 Q. -- websites like yours?

23 A. Well, I -- "use" is sort of a very loose  
24 word there.

25 Q. Okay. Are you aware that Facebook has taken

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1 the position that websites like yours cannot display  
2 photography from Instagram without the artist's  
3 consent?

4 MS. GATES: Objection as to form.

5 THE WITNESS: I'm not aware that we are --  
6 that Facebook has taken the stance that we cannot  
7 embed anything from Facebook or Instagram.

8 BY MR. BURROUGHS:

9 Q. Are you aware of any public statements or  
10 positions taken by Facebook relating to the use of  
11 embedded content on websites like yours?

12 A. No.

13 Q. Have you ever done any due diligence or  
14 researched the issue of whether Facebook allows sites  
15 like yours to use photography from Instagram without  
16 the artist's consent?

17 MS. GATES: Objection as to form.

18 THE WITNESS: I haven't.

19 BY MR. BURROUGHS:

20 Q. Are you aware of anyone at Newsweek having  
21 any conversations about whether Facebook allows its  
22 websites like yours to use content embedded from  
23 Instagram without the artist's consent?

24 MS. GATES: Objection as to form and to the  
25 extent this is getting into any privileged

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1 regarding the use of Instagram content without  
2 consent on websites like yours; is that correct?

3 MS. GATES: Objection as to form.

4 THE WITNESS: I don't know the specific  
5 details of Facebook or Instagram's policies on this  
6 matter.

7 BY MR. BURROUGHS:

8 Q. Have you ever reviewed those policies?

9 A. I have not.

10 Q. Have you ever reviewed Instagram's terms?

11 A. I have not.

12 Q. Are you involved at all in reviewing  
13 Instagram to look for material to copy for display on  
14 your website?

15 MS. GATES: Objection as to form.

16 THE WITNESS: Can you sort of more clearly  
17 define "review" in that question?

18 BY MR. BURROUGHS:

19 Q. Look at.

20 A. I have looked at Instagram.

21 Q. Have you ever gone on Instagram specifically  
22 with the purpose to find photographs to copy for  
23 display on your website?

24 MS. GATES: Objection as to form.

25 THE WITNESS: Sorry. So you said copy onto

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1 to err on the side of caution, I will estimate a low  
2 number.

3 Q. Okay.

4 A. But --

5 (Speaking simultaneously.)

6 BY MR. BURROUGHS:

7 Q. When was the last time --

8 A. Yeah. Sorry. Please carry on.

9 Q. When was the last time Newsweek embedded an  
10 Instagram image in one of its articles?

11 A. I couldn't tell you specifically.

12 Q. Do you recall it happening in the last six  
13 months?

14 A. I'm just racking my brains here. I would  
15 think it has happened in the last six months.

16 Although I can't recall, you know, the last time  
17 specifically we did an Instagram embed.

18 Q. Can you recall specifically if you used an  
19 embed in the last year?

20 A. Specifically, no. But I am sure we have  
21 used an embed on Instagram in the last year.

22 Q. Okay. And why are you sure?

23 A. Based on just, you know, the nature of the  
24 -- what we do every day and the kind of articles we  
25 write, there is more than likely an Instagram embed



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1 in one of those articles.

2 Q. Okay. Can you provide me your best estimate  
3 as to the percentage of the images displayed on  
4 Newsweek.com that come from Instagram via embed as  
5 opposed to your Getty images account?

6 MS. GATES: Objection as to form.  
7 Speculation.

8 THE WITNESS: I couldn't give a sort of  
9 percentage on that.

10 BY MR. BURROUGHS:

11 Q. Okay. So you couldn't tell me whether or  
12 not it was 50/50, for example?

13 A. I couldn't tell that you.

14 Q. Okay. So as you sit here today, you're  
15 unaware of how many of the photographs displayed on  
16 Newsweek came from Instagram as opposed to Getty;  
17 correct?

18 MS. GATES: Objection as to form.

19 THE WITNESS: Yes. I'm unaware of exactly  
20 how many Instagram embeds we have on all of our  
21 articles on Newsweek.

22 BY MR. BURROUGHS:

23 Q. Can you provide me with your best estimate  
24 as to the percentage?

25 A. I don't -- I don't think I can, to be

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1 website.

2 And I'm not aware of any case where we have  
3 also, having been told by an artist do not host our  
4 image, that we then went ahead and also embedded it  
5 after that fact.

6 BY MR. BURROUGHS:

7 Q. In situations where you asked for consent  
8 but the artist doesn't respond, will you still go  
9 ahead and display their content on your site?

10 MS. GATES: Objection as to form.

11 THE WITNESS: If you've asked for consent to  
12 host the image and they haven't responded, we will  
13 probably embed the image.

14 BY MR. BURROUGHS:

15 Q. Okay. And that's your policy even today;  
16 correct?

17 A. Our policy is to request permission to host  
18 the image.

19 Q. Okay. And if you're not given that  
20 permission?

21 A. Then we won't host the image.

22 Q. Will you also -- will you at that point  
23 embed the image?

24 A. We may embed the image if we haven't heard  
25 back from the artist.

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1 Q. And that's your process even today at  
2 Newsweek; correct?

3 A. Yes. We -- yeah, we do that.

4 Q. Is there anyone at Newsweek, and perhaps  
5 it's you, that reviews articles before they're posted  
6 to Newsweek.com to ensure that they're compliant with  
7 artists' rights?

8 A. Yes. We review articles before they're  
9 posted.

10 Q. And whose job is that?

11 A. It is my job as well as some other editors  
12 in the business.

13 Q. Okay. And what's the process for reviewing  
14 that content to ensure that it doesn't infringe the  
15 copyrights of any third parties?

16 MS. GATES: Objection as to form.

17 THE WITNESS: So we will take a look at the  
18 article that the reporter has submitted. Pardon me.  
19 And we will, you know, in the process of looking at  
20 that article, look at the images that are uploaded  
21 into our system.

22 And, you know, if anything strikes us as,  
23 you know, potentially an issue for whatever reason,  
24 we will just then dig into the details of that and  
25 review it with the reporter to ensure that we do have

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1 outside of Getty where we've paid a license fee, but  
2 I wouldn't say it's our practice to not pay license  
3 fees.

4 BY MR. BURROUGHS:

5 Q. How many articles do you review a day on a  
6 typical day?

7 A. It can vary. You know, it can be somewhere  
8 between 10 and 20, depending.

9 Q. And how many articles go live on  
10 Newsweek.com on a typical day?

11 A. I would estimate it's about -- somewhere  
12 between 100 to 200.

13 Q. And that's every day; correct?

14 A. Yes. Every day.

15 Q. Well, what's your best estimate as to the  
16 average time it takes one of your writers to put  
17 together one of these articles?

18 A. I would estimate they take about two hours  
19 to write some of the standard sized articles. Yeah.

20 Q. So are some of your writers filing multiple  
21 stories per day?

22 A. Yes. They will generally file three to four  
23 stories a day.

24 Q. What is the highest number of stories you've  
25 ever seen filed by one writer in one day at Newsweek?

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1 that it's not violating the copyrights of third-party  
2 artists?

3 MS. GATES: Object --

4 THE WITNESS: Sorry. Can you repeat that  
5 again?

6 BY MR. BURROUGHS:

7 Q. Sure. Are you aware of any steps that  
8 Newsweek takes, other than what you've already  
9 mentioned, to ensure that it's not violating the  
10 rights of third-party artists?

11 MS. GATES: Objection as to form.

12 THE WITNESS: I'm not aware of any  
13 additional steps that might be taken.

14 BY MR. BURROUGHS:

15 Q. Okay. Does Newsweek have any formal  
16 copyright policy, for example?

17 A. So we have a policy on images, which is sort  
18 of shared widely and it's used to train reporters  
19 with.

20 Q. Okay. Is that the social media guidelines  
21 drafted by Ms. Rice?

22 A. It could be. If you showed me the document,  
23 I'd confirm.

24 Q. Aside from that, are you aware of any other  
25 formal copyright policies at Newsweek?

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1           A.    I did take a look at the logs, and,  
2           unfortunately, they don't go that far back. So I  
3           can't recall having edited it.

4           Q.    How far back do they go?

5           A.    Off the top of my head, I can't remember.

6           Q.    Okay. So is it accurate to say that you  
7           went back to the article log to see whether or not  
8           you were involved in the disputed article, and you  
9           found that those logs were no longer available?

10           MS. GATES: Objection as to form.

11           THE WITNESS: Yes. That's -- yeah, I had a  
12           look at the article and had a look at the logs, and  
13           the logs stop at a certain date. I can't remember  
14           exactly. And so they weren't particularly  
15           informative.

16           BY MR. BURROUGHS:

17           Q.    Okay. Do you know who, if anyone, deleted  
18           those older logs?

19           MS. GATES: Objection as to form.

20           THE WITNESS: I don't think anyone deleted,  
21           although I don't know. I think it's more a case of  
22           the system doesn't have a log. For some reason, it  
23           maybe cuts off after a certain amount of time. But I  
24           think I'm just speculating there.

25           ///

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1 Q. Did Ms. McGucken do any background -- I'm  
2 sorry. Withdraw the question.

3 Did Ms. Hignett do any background research  
4 on Mr. McGucken before publishing the article?

5 A. I don't know about that.

6 Q. Did Ms. Hignett review any of Mr. McGucken's  
7 prior work before publishing the article, aside from  
8 the image that she displayed?

9 MS. GATES: Objection to the form.

10 BY MR. BURROUGHS:

11 Q. Did Ms. Hignett know anything about  
12 Mr. McGucken other than what she obtained from  
13 Instagram and the third-party article?

14 MS. GATES: Objection as to form.  
15 Speculation.

16 THE WITNESS: I don't know.

17 BY MR. BURROUGHS:

18 Q. So as far as Newsweek knows, Mr. Hignett did  
19 no -- or Mrs. Hignett did no background research on  
20 Mr. McGucken before publishing the article; correct?

21 MS. GATES: Objection as to form.

22 THE WITNESS: I don't -- I don't know what  
23 she did, so I can't really answer that.

24 BY MR. BURROUGHS:

25 Q. And the logs that would reflect that have --

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1 THE WITNESS: Yeah. It appears the quotes  
2 were sourced from SF Gate, and some of the additional  
3 information as well.

4 BY MR. BURROUGHS:

5 Q. Okay. So other than the material taken from  
6 SF Gate, Newsweek does not comment or criticize  
7 Mr. McGucken or his work at all in this piece;  
8 correct?

9 MS. GATES: Objection as to form.

10 THE WITNESS: If we just scroll to the  
11 bottom, please.

12 So can you repeat that question, please?

13 BY MR. BURROUGHS:

14 Q. Sure. Other than the material that  
15 Ms. Hignett copied from SF Gate, and at most  
16 paraphrased, about Mr. McGucken, this article doesn't  
17 criticize or comment Mr. McGucken or his photography  
18 at all, does it?

19 MS. GATES: Objection as to form.

20 THE WITNESS: I did not spot any criticism  
21 of his photography. And if we just scroll up to his  
22 image again, please. Whether we commented on it,  
23 I -- you know, I think the -- there's no specific  
24 comment. Although we do include his own words.  
25 Right? Saying, you know, how -- his own comments on



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1 the event.

2 BY MR. BURROUGHS:

3 Q. Okay. So is it accurate to say that the  
4 only comments about the photography in this Newsweek  
5 article are Mr. McGucken's comments?

6 MS. GATES: Objection as to form.

7 THE WITNESS: I guess that's -- that's fair  
8 to say.

9 BY MR. BURROUGHS:

10 Q. Okay. Can you point out any other comments  
11 on Mr. McGucken's photography in this Newsweek  
12 article other than Mr. McGucken's comments?

13 A. I did not notice any.

14 Q. Okay. Scroll down again to the bottom.  
15 Do you know who appended the clarification  
16 referencing Ms. Cloke at the bottom of this article?

17 A. I do not know specifically who did.

18 Q. If you wanted to know that, where would you  
19 look?

20 A. I would want to check the article log.

21 Q. Okay. And that would -- those logs are --  
22 again, they're -- they no longer exist; correct?

23 MS. GATES: Objection as to form.

24 THE WITNESS: I don't know if -- you know,  
25 they exist somewhere on the system. But I can't

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1 access the changes to figure out who added that  
2 comment at the bottom, for example.

3 BY MR. BURROUGHS:

4 Q. Okay. So as a managing editor of Newsweek,  
5 the only records that would indicate to you when the  
6 appendage was made are no longer available to you;  
7 correct?

8 MS. GATES: Objection as to form.

9 THE WITNESS: It currently seems that way  
10 unless there's a -- as I say, some other log that I'm  
11 not aware of.

12 BY MR. BURROUGHS:

13 Q. As a managing editor, would there be logs  
14 you're not aware of, of articles?

15 MS. GATES: Objection as to form.

16 THE WITNESS: It's -- it's possible. I  
17 don't -- and I don't know exactly all the technical  
18 details of how the system operates and how logs are  
19 stored.

20 BY MR. BURROUGHS:

21 Q. Okay. Do you know who added the  
22 Hannah Cloke material to this article after it was  
23 published?

24 MS. GATES: Objection. Asked and answered.

25 THE WITNESS: I don't know specifically. I

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1 BY MR. BURROUGHS:

2 Q. Okay. So let me rephrase.

3 It is accurate to say that the McGucken logs  
4 are the only specific logs that you can recall ever  
5 looking for and being unable to locate on the  
6 Newsweek system?

7 MS. GATES: Objection as to form.

8 THE WITNESS: I would say that I can -- this  
9 is the only instance I can recall right now where I  
10 wanted to look at the old logs for some reason and I  
11 couldn't.

12 BY MR. BURROUGHS:

13 Q. And you couldn't locate them; correct?

14 A. They weren't available in the back of our  
15 CMS here.

16 Q. Okay. We're going to put another document  
17 in front of you that we're going to mark as  
18 Exhibit 16. It's Newsweek 16.

19 (Plaintiff's Exhibit 16 was marked  
20 for identification by the court  
21 reporter and is attached hereto.)

22 BY MR. BURROUGHS:

23 Q. Do you recognize this exhibit, and if so,  
24 how?

25 A. Yes. This looks like the -- a dialogue box

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STATE OF CALIFORNIA                    )  
  )       ss.  
COUNTY OF LOS ANGELES            )

I, JAMES ETHERINGTON-SMITH, having appeared  
for my deposition on Thursday, March 11, 2021, do  
this date declare under penalty of perjury that I  
have read the foregoing deposition, I have made any  
corrections, additions or deletions that I was  
desirous of making in order to render the within  
transcript true and correct.

IN WITNESS WHEREOF, I have hereunto  
subscribed my name this \_\_\_\_\_ day of \_\_\_\_\_,  
2021.

\_\_\_\_\_  
JAMES ETHERINGTON-SMITH

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1 STATE OF CALIFORNIA )  
2 ) ss.  
3 COUNTY OF LOS ANGELES )


4 I, MARYLYNNE SANDOVAL-ROBLES, CSR No. 12498,  
5 a court reporter for the County of Los Angeles, State  
6 of California, do hereby certify;

7 That prior to being examined, JAMES  
8 ETHERINGTON-SMITH, the witness named in the foregoing  
9 deposition, was by me duly sworn to testify the  
10 truth, the whole truth, and nothing but the truth;

11 That said deposition was taken before me at  
12 the time and place herein set forth, and was taken by  
13 me in shorthand and thereafter transcribed into  
14 typewriting under my direction and supervision, and I  
15 hereby certify that the said deposition is a full,  
16 true and correct transcript of my shorthand notes so  
17 taken;

18 I further certify that I am neither counsel  
19 for nor related to any party to said action, nor in  
20 any way interested in the outcome thereof.

21 IN WITNESS WHEREOF, I hereto subscribe my  
22 name this 23rd day of March, 2021.

23   
24 \_\_\_\_\_  
25 Certified Shorthand Reporter in  
and for the County of Los Angeles,